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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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MARLON A. SMITH,  
  
Petitioner,

v.

UNITED STATES OF AMERICA,  
  
Respondent.

**MEMORANDUM DECISION  
AND ORDER DENYING  
APPLICATION TO PROCEED  
WITHOUT PREPAYING FEES  
OR COSTS**

Case No. 2:21-cv-00081-DN

District Judge David Nuffer

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Petitioner seeks leave to appeal *in forma pauperis*<sup>1</sup> the judgment denying and dismissing his § 2255 Motion.<sup>2</sup>

“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”<sup>3</sup> Additionally, under 28 U.S.C. § 1915(a)(2), a prisoner seeking to appeal a civil action *in forma pauperis* must include a certified copy of his prison trust fund account statement or the institutional equivalent.<sup>4</sup>

Petitioner was denied a certificate of appealability regarding his § 2255 Motion.<sup>5</sup> There is no reasonable basis for any alleged error in Petitioner’s appeal, and his appeal presents no

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<sup>1</sup> Application to Proceed Without Prepayment of Fees and Affidavit (“Application”), [docket no. 28](#), filed under seal Oct. 29, 2021; Notice of Appeal, [docket no. 27](#), filed Oct. 29, 2021.

<sup>2</sup> Memorandum Decision and Order Denying Smith’s Amended 28 U.S.C. § 2255 Motion, [docket no. 22](#), filed August 13, 2021 (as amended, [docket no. 26](#), filed October 5, 2021); Judgement in a Civil Case, [docket no. 23](#), filed September 14, 2021).

<sup>3</sup> 28 U.S.C. § 1915(a)(3).

<sup>4</sup> 28 U.S.C. § 1915(a)(2).

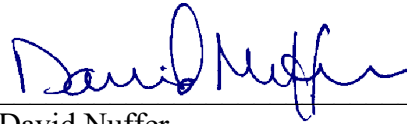
<sup>5</sup> Memorandum Decision and Order Denying Smith’s Amended 28 U.S.C. § 2255 Motion, [docket no. 22](#), filed August 13, 2021 (as amended, [docket no. 26](#), filed October 5, 2021).

substantial question for review. Therefore, it is certified that Petitioner's appeal is not taken in good faith. Furthermore, Petitioner did not attach a copy of his prison trust fund account statement to his application.

IT IS HEREBY ORDERED that Petitioner's Application<sup>6</sup> is DENIED.

Signed this 9th day of November, 2021.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer  
United States District Judge

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<sup>6</sup> Docket no. 28, filed under seal Oct. 29, 2021